

**Minutes**  
**WARRICK COUNTY AREA BOARD OF ZONING APPEALS**

Regular meeting to be held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
June 25, 2018 at 6:00 P.M.

**PLEDGE OF ALLEGIANCE**

**MEMBERS PRESENT:** Jeff Valiant, Chairman; Terry Dayvolt, Doris Horn, Paul Keller, Mike Moesner, Jeff Willis, and Mike Winge.

Also present were Morrie Doll, Attorney, Molly Barnhill, Assistant Director, and Kim Kaiser, staff.

**MEMBERS ABSENT:**

**MINUTES:** Upon a motion made by Doris Horn and seconded by Mike Winge the Minutes of the last regular meeting held May 29, 2018 were approved as circulated.

Chairman, Jeff Valiant explained the rules of procedure.

**BZA-V-18-10**

**APPLICANT:** D Martin Brothers Co. Inc. by Cougar Martin, V.P.

**OWNER:** Lillian P. Loveall, Owner

**PREMISIS AFFECTED:** Property located on the east side of Clint Cir. Approximately 680 feet NW of the intersection formed by Lincoln Ave and Clint Cir, Ohio Township Lot No. 27 in Asher Estates Subdivision. *4635 Clint Cir.*

**NATURE OF CASE:** Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an addition to a residence not meeting minimum 25' rear yard requirements in an "R-2A" Residential Zoning District encroaching 5'. (*Advertised in The Standard on June 14, 2018*)

Cougar Martin and Lillian P. Loveall were present.

The Chairman called for a staff report.

Mrs. Barnhill stated we have all of the return receipts except for two, from Diane M. Smith Kozlecar and Kumar Parimal & Chowdhury Sugata Roy but we do have all of the pay receipts and the letters were mailed in the correct time period. She said to Cougar Martin whenever you get those green cards just bring them in. She said the existing land use is a residence. She stated the surrounding zoning and land use to the north, south, east, and west is all residential with an "R-2A" zoning. She said there is no flood plain and the property has an existing driveway on

Clint Cir. She stated there is an ordinance that requires a 25' rear yard for a residence. She said the applicant is requesting a 5' encroachment into the 25' rear yard. She said the applicant states "Mrs. Loveall wants to add a 15' x 17' sunroom on the back of her home. The purpose of the room is for Mrs. Loveall, who is 86, to have an area to play cards with her family while enjoying natural sunlight. She stated everything is in order."

Doris Horn asked if the room would be on the other side of the patio that is on the back

Cougar Martin stated he has a copy of it if she would like to look at it.

Doris Horn replied she could see the little patio but didn't know if it would be on the other side of it.

Cougar Martin replied it would go over the current concrete pad and it will be removed.

Doris Horn replied ok.

Lawrence Quinn stated he lives at 4585 Clint Circle. He said he has the house directly behind Mrs. Loveall. He stated he essentially has no objections if you do allow the encroachment on that. He said his only concern, and he just discussed this with them, is the water situation in that particular area. He stated he wanted to make sure that any improvements to that area would not potentiate more trouble with the water they have. He said they are sort of in the middle of a circle as you can see and the water removal is a little questionable at this time. He said they have quite a bit of standing water between the houses. He said he has discussed this with them and has no objections to the encroachment. He stated she is a good neighbor too.

Mike Moesner stated this might help the situation because part of it will probably be guttered and it would catch the water that normally would not be guttered.

Ascertaining there were no other questions from the Board or remonstrators, the Chairman called for a motion.

I, Mike Winge, make a motion to approve the variance application based upon and including the following findings of fact.

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.

3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is small size lots and compact and fully developed. There is no other area in which this addition could extend.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.
  - b) Subject to a Building Permit being obtained.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - d) Subject to all utility easement and facilities in place.

Motion was seconded by Mike Moesner and unanimously carried.

Mrs. Rector told him they could pick up their approval on Wednesday.

**BZA-V-18-11**

**APPLICANT & OWNER:** Brent G. & Amy S Van Zandt, owners

**PREMISIS AFFECTED:** Property located on the W side of Old Hickory Dr. approximately 0 feet west of the intersection formed by Old Hickory Dr. and Arbor Ridge Dr., Ohio Township Lot No. 92 in Old Hickory Estates IV "A" in a Residential Zoning District. *3225 Old Hickory Dr.*

**NATURE OF CASE:** Applicant requests a variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an addition to a single family dwelling encroaching 13' into a 25' Building Setback Line. Applicant is proposing a side yard of 12' thus requesting a 13' relaxation from the regular requirements. (*Advertised in The Standard on June 14, 2018*)

Brent and Amy Van Zandt were present.

The Chairman called for a staff report

Mrs. Barnhill stated we have all of the return receipts except for one from Steven & Billie Ferrell but we do have the white pay receipt and it was mailed correctly. She said the existing land use is "R-1A" and the surrounding zoning on all sides is zoned "R-1A" which will be single family zoning district. She said there is no flood plain. She stated their access is an existing drive on Arbor Ridge Dr. She stated the ordinance requires that corner lots have a 25' building setback line on one side and a minimum of 15' on the other. She stated this lot was platted with a 25' building setback line on both sides. She said this addition would be encroaching 13' into the setback leaving a 12' side yard. She said if this was a regular lot side yard would be 6'. She said the applicant states the purpose of this variance is to allow for the construction of an addition to a residence consisting of a one-car garage with a bedroom above. She said in the Old Hickory Subdivision long-term parking of vehicles on the street is not allowed. She added with a future addition of a third, fourth, and fifth driver in the home additional off street parking is required and is the most safely provided by an additional garage. She said the addition would also allow for the creation of a second floor spare bedroom for use by a disabled family member who is a frequent guest for medical appointments in the Evansville area. She added to allow a second floor access to this room the addition to the garage cannot be located elsewhere on the property. She said requiring a 25' setback on the north side of the property places this property at a disadvantage to other properties in the neighborhood. She said the 25' setback on north side of the property causes less of the property to be available for construction when compared to the majority of the other lots in the neighborhood. She stated the addition would be constructed to match the existing structure and not detract from the character of the neighborhood. She said the addition would not appear out of place when compared to adjacent lots, as the addition would still be setback 12' from the right-of-way and over 22' from the actual roadway. She said the addition would be no closer to the roadway than an existing privacy fence and be less of a visual obstruction to vehicles at the intersection in front of the house that a vehicle parked in the driveway. She said Allowing this addition to be constructed will be beneficial to the property owners, the neighborhood, and Warrick County. She added everything is in order.

Jeff Willis asked if this was a normal lot, they could have applied with only having a 15' setback on that side and still had about 2' to be out of the normal.

Mrs. Barnhill replied yes, 3' out of what the developer could have chosen.

Chairman Valiant asked you currently have a privacy fence in that area, correct.

Brent Van Zandt replied yes, the privacy fence runs east/west. He said the addition would be no closer to the road than the privacy fence.

Terry Dayvolt said you said the addition would be no closer to the road than the privacy fence.

Brent Van Zandt replied correct.

Terry Dayvolt asked the addition you are proposing would be entered off the driveway.

Brent Van Zandt replied yes, he would pull in the driveway and then do a right turn, a 90° offset, from the current garages.

I, Mike Moesner, make a motion to approve the Variance Application based upon and including the following findings of fact:

The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.

1. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
2. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is this is a corner lot, which is limited in numbers and the proposed setback variance matches or exceeds the setback requirements for non-corner lots within the subdivision and falls within three feet of a minimal setback distance required within the Warrick County Subdivision Control Ordinance.
3. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.

4. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
5. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
6. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
7. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
8. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
9. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
  - a) Subject to an Improvement Location Permit being obtained.
  - b) Subject to a Building Permit being obtained.
  - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
  - d) Subject to all utility easement and facilities in place.

Motion was seconded by Doris Horn and unanimously carried.

Mrs. Barnhill stated he could pick up his approval on Wednesday.

**BZA-SU-18-12**

**APPLICANT:** New Cingular Wireless PCS, LLC d/b/a AT&T Mobility by David Pike, Attorney.

**OWNER:** Mary L. Wilson by David Pike, Attorney

**PREMISIS AFFECTED:** Property located on the west side of Folsomville/Degonia Rd approximately 1630 feet south of the intersection formed by Folsomville Rd, Lincoln Trail Rd. and Folsomville-Degonia Rd, Owen Twp. 34-4-7 (*Complete legal on file*)

**NATURE OF CASE:** Applicant requests a Special Use, SU18, from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a 199' wireless communication tower in an "A" Agricultural Zoning District. (*Advertised in The Standard on June 14, 2018*)

Robert Grant, from David Pike Legal, and Mary Wilson were present.

The Chairman asked for a staff report.

Mrs. Barnhill stated we do have all of the return receipts. She said this parcel is vacant. She stated to the north, south, east, and west are all either vacant or residential in an "A" Agricultural Zoning District. She said the property is partially in the "A" flood zone but not near where the tower will be located. She said they are proposing to extend the existing drive of the property owner to the tower. She stated they would have to file a commercial driveway permit to upgrade an existing driveway and post a letter of credit or construct the driveway prior to their permits being issued. She said the applicant states "The 199' wireless communication facility, see application material submitted here within". She said they have submitted a large packet for all of you to review. She stated the proposed tower would be a monopole tower; it is 199' tall with a four foot lightening arrestor. She said there is not an existing tower or structure that can accommodate the area to be covered by the proposed tower. She said they show the tower will have to be able to co-locate an addition of three more service providers once the tower has been completed. She said the setback requirement from any residence is a distance of two feet for each one foot of height of the tower or 300' whichever is greater. She added the total height of this tower is 199' so it should be at least 398' away from any residence. She stated they are showing the proposed tower and lease area is over 500' from the nearest residence, which is same property owner that owns the proposed site location. She said nearest structure is an unattached accessory which is over 400' from the proposed tower and the nearest property line is 399.5' from the proposed tower.

She said the applicant has stated in the application that this tower will enhance service to their customers and E911 access for emergencies. She stated AT&T has been selected by FirstNet to build America's first nationwide public safety broadband network dedicated to first responders. She said this network would cover all 50 states, 5 U.S. territories, and the District of Columbia, including real communities and travel lands in those states and territories. She said the applicants have answered all of the proposed use questions in the Board members packets. She said they have also included a map showing there are no suitable tall structures or other communication towers, which they could co-locate on within a one-mile radius of the proposed site. She stated the application is in order.

Robert Grant stated they have a power point presentation that has been loaded and it will take about 30 minutes to go through. He said rather than doing that at this time what he would prefer to do, with this Board's permission, would be to preserve that to help answer any questions that may come up. He said you have a substantial amount of material in front of you already. He said the power point presentation really doesn't add a whole lot to that, what that generally does is give some points for anyone in the audience who may have some questions. He asked if he

may reserve it for that purpose, he would keep his comments very brief. He stated he has with him the property owner, Mary Wilson. He said the deployment that AT&T is doing at this time, is unlike any that he has ever been involved with in the 15 years that he has been doing this work in the wireless industry. He said this deployment penetrates primarily rural areas. He stated in the past they have built towers in cities, around county centers, and along interstates. He said the purpose of this deployment is to serve rural areas that are not served. He said this is, as you know public utility infrastructure unlike the variances that were heard earlier that are intended to benefit the property owner, this benefits the public as a whole. He stated not only is it a matter of public convenience, it is a matter of public necessity, a matter of public safety. He said according to the Center of Disease Control over 50% of all homes rely exclusively on their mobile phones, they do not have a landline anymore. He said that is critical to public safety because according to the FCC more than 70% of all E911 emergency calls are made with a mobile device so lives are at stake. He said having said that he is going to shut up and open the floor to any questions from you, and any questions from the audience. He added there is much he could say but he isn't going to say it.

Mike Moesner asked if they would be leasing space out on there to like Verizon and other companies. He asked how does this work as far as the co-locaters.

Robert Grant replied absolutely, this tower was designed for a minimum of four carriers AT&T would be one. He said all major carriers have agreements with each other that we co-locate on their towers and they co-locate on ours. He said it is the preferred way to deploy this technology by co-locating. He stated they are not in the business of building towers they are in the business of getting antennas in the air so that our mobile devices work.

Mike Moesner stated so that should improve the reception throughout that whole area then.

Robert Grand replies absolutely.

Mike Moesner said that is needed.

Doris Horn asked what kind of range it would be.

Robert Grant replied he is not a RF engineer, he doesn't know the exact answer to that. He said he has asked their engineers that question multiple times. He stated they are deploying different technologies here but the range is anywhere from 2 ½ to 3 ½ miles depending which technology that you are looking at. He said by that he means one of the new technologies that they are working on is fixed wireless local blue, what that means is it brings high speed internet service to a rural area that may not be getting it from cable or some other service. He said whether you are talking about that or you are talking about voice, the range depends but that is the approximate range of it.

Mike Moesner asked where is the next closest one that you have been involved in according to the same types of similar tower.



Robert Grand replied with materials that we have filed there should be, well they don't always, show the nearest towers. He said the technology is designed to connect to the nearest tower. He said the way it works the towers overlap. He said there is a little bit of an overlap so that the signal is passed seamlessly from one tower to the next. He stated that is why when you are driving down the highway you can be talking on the phone and the call doesn't drop.

Mike Moesner stated so it is just passed.

Robert Grand said cell phones are really fancy walkie-talkies. He said very high tech walkie-talkies. He stated the signals are relayed to the towers instead of device to device it bounces to the tower and back to your device. He said the nearest tower is 1 ½ miles out of the area that they need to be in to serve this area. He said it is not a viable location alternative for them, if it was they would be on it that is their preference.

Mike Winge asked if he could explain the coverage map because it is pretty vague.

Robert Grand replied that is the before coverage there should be one right after it. He said if you look at the growth of the green that is the expansion of coverage. He stated again he is not a RF engineer; he has done this long enough that he understands some of the engineering principles involved because he has worked with these people and talked about this from time to time. He stated the second one is the after coverage that shows the improved coverage that you get. He said it is pretty substantial as you can see.

Mike Moesner asked the monopole is the freestanding and not a guide wire.

Robert Grand replied there are no guide wires. He stated they did a survey of a six-mile radius, there are ten towers in six-mile radius and the average height is 267 feet. He stated this would be the shortest tower within six miles so they are getting shorter.

Chairman Valiant asked what kind of lighting are we talking about. He said he knows they have to be over a certain height for FAA lighting.

Robert Grand replied under 200' the general rule of thumb is and always is there is no lighting required. He said the only exception to that is if we are close to an airport and in the flight path, and then sometimes in those instances they will want us to light a shorter tower. He said there is no lighting required for this tower, this is a 195' with a 4' lightning arrestor a 199' total.

The Chairman asked for any remonstrators for or against to please step to the podium.

Sam Weaver stated he is not necessarily for or against the tower; he lives to the south the next parcel that runs the whole depth of their property. He said again he is not necessarily for or against he just wanted some questions answered. He asked is it for local service or is it a repeater and don't everybody think he is a psychopath but is there a health concern. He stated he knows there has been health concerns linked to high-tension power lines.

Chairman Valiant stated worrying about your health doesn't make you a psychopath.

Sam Weaver said he is labeled as a tower hater up around his neighborhood. He said obviously we have horrible cell phone service so everybody that isn't within the fall distance of this tower is for it obviously. He said do you know what specific carriers are also going to be have repeaters or access to that tower, something just to let you all know as far as the possible negative side of this he is a mortgage lender and there are certain loan products that will not allow something on adjoining properties. He said not that there is anybody, he doesn't know but he thinks the house is vacant that they are talking about extending the driveway. He said he thinks the driveway is off Folsomville-Degonia Road if he understands the description.

Mary Wilson stated the driveway will be extended off her drive the house isn't vacant.

Sam Weaver stated he thought her daughter and son-in-law lived there.

Mary Wilson replied they do and so does she.

Sam Weaver stated again he isn't necessarily here for or against he just wants more questions answered. He stated his wife had cancer years and years ago so obviously anything potentially and that is what from what little bit of research they have been able to acquire is a repeater because they say repeaters are a narrow beam that are going directly in one direction. He said if these are for local service and another question is he wasn't sure from this gentleman's discussion was he heard 911 mentioned is this for cell phone service or is this strictly for emergency preparedness use. He said he thinks that is all of the questions he has.

Robert Grand stated this is local service and it is cell phone service, but it is more than cell phone service. He stated FirstNet is improved first responders in a fixed wireless loop it is also with high speed internet but AT&T Mobility is primarily cell phone services. He said yes this is local. He said AT&T would be at the top of this tower, there is space available for other carriers. He said it is kind of like the movie Field of Dreams, you build it they will come. He said we will put it up and they will want to co-locate on it. He stated the tower is, first let us talk about safety; its engineering is designed with a zero fall zone. He said in the event of a high wind event it is designed to crimp or crump and in the worst-case scenario to fold over on itself within this 100' x 100' compound. He said that is one part of the safety, the other part of the safety is a little trickier and he thinks he knows what Sam Weaver is asking because he mentioned power lines. He said first he has to be a lawyer and say that the FCC telecommunications act prohibits any discussion of the health effects of our F emissions. He stated you couldn't base your decision upon that. He added having said that, he does a lot of these hearings, he knows people are concerned about this, you get on the internet and read stuff, the FCC has exclusive jurisdiction over these emissions. He stated there are publications available that will answer any questions you have about that. He said they are available on line; you can look them up and see it directly from the FCC's website. He said their determination and looking at all of the studies is it does not pose any risk to health. He said the reason is all of the studies show any impact at all that it has on the human organism is within 33'. He said the antennas are at 195' above the ground and they are located within a 100' x 100' compound. He stated anything beyond that

dissipates to negligible impact upon anybody. He said that is what the FCC is determining because they made those determinations they didn't want the decision made by folks like this to be weighed down or muddled down by that. He said he hopes that answers his question. He said there is plenty more information available on that to you. He asked if he answered all of his questions.

Sam Weaver asked there was a little mark on the map originally, is that where the tower would be.

Bob Johnson stated all of you have drawings (people talking and couldn't make out what he was saying).

Chairman Valiant asked if he was talking about the little red X. He said that isn't where the tower is going.

Robert Grant said all of you have the survey it is the second sheet. He said it would give you an expanded out view. He said this is what they call their adjoiners map; it is prepared from the parcel map in the Auditor's office. He said this is the location of the tower and these are the surrounding parcels.

Chairman Valiant asked where their house is.

Robert Grant stated it is not shown on this particular drawing. He said there is a structure here and a structure there that is all he is seeing on this drawing.

Chairman Valiant stated that doesn't tell him anything.

Attorney Doll pointed to the computer monitor and stated that is Mary Wilson's house there.

Chairman Valiant replied yes, her house is right there but as far as the tower.

Mary Wilson stated the tower itself is going to be in the top field (pointing at the t.v. monitor).

Chairman Valiant said Folsomville-Degonia Rd runs down from the top corner.

Mary Wilson replied Folsomville-Degonia Rd runs north and south from top to bottom.

Chairman Valiant asked Kim Kaiser to put the arrow about where the tower will be. He said originally, there was a little mark on the map.

Mrs. Barnhill stated about 400' off the south line of Mary Wilson's property.

There is a lot of discussion among themselves on where the tower will be located.

Mary Wilson stated they had talked about both fields, she owns both fields, and she owns the property past it.

Chairman Valiant said so it is almost smack in the middle of that.

Robert Grand replied yes, sir. He said that was done so they could meet all of the setbacks. He said rule number one is to meet setback requirements.

Sam Weaver said there has been talk in their neighborhood, he has been there for 15 years, there have been several other people who have very remote areas that have been soliciting companies and nobody would talk to them. He said there is, he isn't trying to shoot this down, but there is tons of high ground around there that is barren. He said that is another thing, if you are still going to put it up in that area there are other areas that are totally barren. He said there is nothing on them that is something to consider too.

Mary Wilson said she was under the impression when they came up that was one of the higher areas, they had discussed both fields, and they picked the highest point.

Chairman Valiant stated that AT&T pays a lot of people a lot of money to find the best places. He said he had a question on the number of carriers that had been brought up and was that a minimum of four.

Robert Grant stated the tower is designed for a minimum of four carriers.

Chairman Valiant asked how many could it handle, he is just curious.

Robert Grant replied he has seen them loaded with six, seven, and eight carriers before.

Bob Johnson stated you wouldn't have to worry about another tower in that area for a while.

Robert Grant said absolutely, this would serve this area not only for AT&T but other carriers for quite some time.

Terry Dayvolt asked who the other three main carriers did he think would be on be on the tower.

Robert Grant said we couldn't guess what other carrier's deployment plans are or what their needs are because all of this has to be designed by each carrier to be integrated into their existing network.

Terry Dayvolt asked if he thought it would be the major carriers.

Robert Grant replied all of the major carriers go on our towers, you see Verizon Wireless, you see Sprint, you see T Mobile, and you see all of them. He said very often these local carriers too.

Mike Moesner asked if this is approved what is the time period as far as getting it up and on line. He said six months, a year, or what.

Robert Grant replied easily under a year. He stated the deployment they are working on, this region crosses Kentucky and Indiana; there are over 300 sites to serve rural areas. He said as fast as they can get them approved, by bodies such as this, then they go on the build plan. He said the build plan is kind of fluid a little bit and it has to do with what is going on currently with them. He stated once it is approved it will be constructed. He said once construction begins it's usually steel in the air and on line often within three weeks so it is a very brief period of construction. He said once it is constructed there is virtually no traffic to it, about once a year a small pickup truck goes out to check on everything. He stated it has no impact on traffic. He said they hope to get it on the air as soon as possible.

Sam Weaver stated the only thing he would ask, now that he know a little more about it, is that if it would be approved tonight or if you can put it on a stay but now that he knows a bit more he would like to research it a little more since he knows what will happen.

Chairman Valiant replied that will be up to the Board.

Sam Weaver replied he understands.

Bob Johnson said you mentioned all of the other Boards you have to go to, what is the distance in travel you have to go to for them.

Robert Grant asked if he was talking about this particular site or other sites.

Bob Johnson replied he is talking about this one. He said you would have to get approval from them.

Robert Grant said no sir he thinks you misunderstood him. He said first of all you are the final word. He said for each site they go through multiple reviews. He said it is reviewed by the FAA, it is reviewed by Schifo, it goes through an environmental assessment, and it goes through all these layers of review, but this is the final review right here. He said if you approve this then it will go on the build plan.

Chairman Valiant told the Board he does have the power point if the Board chooses to see that. He said he would leave that up to the Board.

Bob Johnson asked if the power point was more detailed than what they have.

Robert Grant replied the power point presentation is not more detailed than this application that he gave us, which is more detailed. He said the power point is just a review. He stated it gives everybody an overview of what they are doing. He said he thinks that has pretty well been covered.

Bob Johnson said you don't think there is anything there that will help satisfy his mind.

Robert Grant replied he doesn't think there is anything additional in the power point presentation that will answer anything other than what has been answered.

Jeff Willis said we aren't allowed to consider the health impact.

Chairman Valiant replied correct, we cannot.

Mike Moesner stated the tower company has provided us a lot of information.

Doris Horn stated we have done towers in the past.

Chairman Valiant asked if anyone would like to table this special use for review, or if you feel good in your thought process, you can entertain a motion.

I, Doris Horn, make a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

In addition, the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required State or Federal Permits.
2. Subject to an Improvement Location Permit being obtained.
3. Subject to any required Building Permits being obtained.
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.

5. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
6. Subject to an anti-climbing device and/or fence, be put up around tower.
7. Subject to no revolving beams of light or strobe lights.
8. Subject to the following from the Warrick County Comprehensive Zoning Ordinance:

Each operator of a telecommunications facility must send to the Area Plan Commission a copy of any notice sent to the FCC of intention to cease operations. All abandoned or unused towers and associated facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Board of Zoning Appeals. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted prior to issuance of the required improvement location permit, shall be incorporated as part of the permit, and permit approval shall be conditioned upon removal of the structure(s) within six (6) months after cessation of the use. In the event that the tower is not removed within six (6) months of the cessation of operations at a site, the tower and associated facilities may be removed by the County and the costs of removal assessed against the property. (pg. 35)

Motion was seconded by Terry Dayvolt and unanimously carried.

Robert Grant requested a copy of all of the conditions so he could inform his client and make sure they comply with all of them.

Mrs. Barnhill stated we would type the minutes and we will have an approval with all of the conditions in it. She said if you could give us a week to get that together and will take a little longer to get the minutes done.

Robert Grant replied terrific, thank you so much.

**OTHER BUSINESS:** None

**ATTORNEY BUSINESS:**

Attorney Doll stated our first hearing on the Prime Foods case in July. He said the only petitioners remaining on the case are Mr. & Mrs. Cobb. He stated we have challenged their standing as aggrieved parties. He said a two-day hearing before Circuit Court is scheduled for July 25 and 26 on this single issue of whether or not the Cobb's meet the definition of being an

aggrieved party to the decision by the BZA. He said once the court rules on that if they find they are aggrieved then we go to a second hearing that examines the rational that the Board used to approve the Special Use and whether they were constitutional or lawful. He stated if that were found affirmatively correct then a final hearing would occur some months later. He said that would determine if there was any other lawful reason why it should not have been approved. He stated we are finally getting to the hearing process because of Judge Grainger's sickness. He said we are now set for Wednesday the 25 & 26 in Circuit Court.

Mike Moesner asked if at the hearing if they are found to not be aggrieved is that the end of it.

Attorney Doll replied case is over.

Mike Moesner stated that is it.

Attorney Doll stated they could appeal. He said appeals are very expensive. He said they typically take nine months to a year to go through the court of appeals process not the Supreme Court just the Appellate Court. He said a general rule of thumb would be an appeal would cost a party around \$25,000 per side. He said it really gets to be serious if they wish to appeal.

Mike Moesner asked if they had ever answered any of the interrogatories or anything.

Attorney Doll replied very superficially. He said they are representing themselves; they no longer have any attorneys. He said they are the only petitioners now. He said the provided, what he is going to call, layman answers where they didn't fully answer them. He stated they technically have filed an answer. He said he is sure the court will give them wide latitude, benefit of the doubt. He added but we intend to argue that the answers they have given on their positions where they haven't fully answered they can't come in at a later date and add new information. He said there is no designated expert witness and no legal representation.

Chairman Valiant asked if Attorney Doll had anything else.

Attorney Doll replied no.

### **EXECUTIVE DIRECTOR:**

Mrs. Barnhill stated Liberty Mine filed their SU 13 today to mine within an urban area. She said it is between Boonville and Chandler off Millersburg Rd.

Attorney Doll stated the Old Squaw Creek Mine area.

Mrs. Barnhill said they had talked about before, she thinks this will be a long meeting, we don't want another six o'clock meeting lasting for ten hours. He said if someone would want to make a motion for a special meeting. She said it would have to be on a different date and they would have to get their 21-day mailing in. She stated we couldn't do it on the same date in this room because it is being used that day.



Attorney Doll stated Mondays the Commissioners use this room before us. He said the drainage Board meets at 2:30 p.m., the Stormwater District meets after that, and then at 4:00 p.m. the Commissioners meet. He said we cannot do this on July 23 which is our normal meeting, or you could just say well let's start earlier that day, we could start with our regular meeting and then we will have the remonstrations for Liberty Mine. He said we expect it to be a large turnout. He said there will be a lot of interest in this mine site and there are a lot of pros and cons that have already surfaced. He said if you remember the Town of Boonville tried to make this mine illegal and there are lawsuits pending. He said we could anticipate that this SU 13 will be drawing a lot of public input.

Terry Dayvolt asked if we would hold it in the meeting room.

Attorney Doll stated we don't have any place to hold it in Warrick County that has the recording system available to us if you remember that is the problem we had ...

Bob Johnson asked none of the school auditoriums have...

Attorney Doll stated they do not. He said they do not have this recording system and we have to keep impeccable minutes of the meeting in case someone files suit against us on whatever decision might be made. He said we need to have it not just in a big room but we have to have it in a room that has sophisticated electronic recording system available too. He said in Warrick County this is it. He said we have in the past, as you will remember, talked about keeping the doors open and talked about having outside speaker systems available that could be heard in the hallway outside. He said Sherri and he have talked and Molly and he have talked, we need 21 days from a potential meeting date. He said Liberty Mine as you know is the mining company and Alcoa Fuels is the owner of the mine site. He said Liberty Mine will be talking to Molly tomorrow morning to find out what this Board decides. He said he spoke with Sherri today and they both feel this needs to be a daytime meeting. He stated we know you have work schedules and we understand that. He said we try not to do that as you know but given our experience with Prime Foods and given the amount of public interest in this mine site already we think it is imperative that we start the meeting sometime in the morning like 9:00 a.m. and see how far we get. He said we think it needs to be on a day other than Monday, July 23. He said if we do a 21 day forward look assuming that they can get their notices out...you are going to tell them tomorrow.

Mrs. Barnhill replied yes, she is telling them tomorrow and if they get them out Wednesday, the 18<sup>th</sup> is the soonest we could do it.

Mike Moesner asked the 18<sup>th</sup> is what day of the week then.

Mrs. Barnhill replied it is a Wednesday.

Attorney Doll stated it could be any time after July 18.

Bob Johnson said if we did hold that meeting in here, let us just say it was crowded, could we not just if it was too bad...

Attorney Doll asked him if he was here for Prime Foods.

Bob Johnson replied oh yeah.

Attorney Doll asked why are we having this conversation then.

Bob Johnson said what he is saying is if it is just too packed we could always table it and try to figure something out.

Attorney Doll stated when we commence this hearing, as you know his philosophy is we don't stop.

Chairman Valiant said yes, he has heard that before.

Attorney Doll stated as a consequence to that, his suggestion is we don't change the room, we commence it here and we stay until the cows come home. He said the question gets to be what date after the 18<sup>th</sup> or after July most likely works for the majority of this Board so Molly can give the applicant that date to put in their notice that has to be published and mailed we presume in the next few days.

Mike Moesner stated that is while the 4-H fair is going on but he doesn't know if that has anything to do with anything.

Attorney Doll replied yes, that is fair week. He stated he is in a deposition that has been rescheduled once, on July 20th, which is a Friday. He said he would rather not do that although he could have someone else cover that if that is the only date we could have this hearing. He said he is available the 18th or 19th.

After discussion among the Board, they determined that Wednesday the 18th works better for everyone.

Attorney Doll stated then we need a motion to hold the meeting on Wednesday, July 18th.

Chairman Valiant asked if that is the only thing we are handling at that meeting.

Attorney Doll replied yes.

Jeff Willis asked if the regular meeting that next Monday will be for everything else.

Attorney Doll replied yes, because we have already given applicants that Monday deadline for July 23rd and they have relied upon that for their public notices and notifications. He stated we couldn't move everything else.

Chairman Valiant stated he was just making sure that was the only thing at the special meeting.

Attorney Doll stated we would have to give notice to the media of the special meeting. He said we have to do that he thinks ten days prior to the meeting.

Doris Horn asked if the motion was for July 18th at 9:00 a.m.

Mike Moesner made a motion to have a special meeting for Liberty Mine SU 13 application on July 18, 2018 at 9:00 a.m.

The motion was seconded by Doris Horn and unanimously carried.

Mike Moesner asked if we would be the final arbitrators on that; if we approve then it all goes through.

Attorney Doll replied yes, just like Prime Foods. He stated he is going to give them the same admonition that he gave for Prime Foods. He said, as you know you should not formulate an opinion about the propriety of the SU 13 application before you have heard all of the evidence in the public hearing. He said furthermore by state statute members of the Board of Zoning Appeals are not permitted to have conversations with anyone other than your staff of any proponents or opponents are not permitted to talk to you about the forthcoming application. He said in a sense if you are contacted by anybody please report that to Molly and let us know. He said if you start getting emails, here we go again, don't respond to them, don't answer them, don't listen to them, and don't read them. He said let Molly know so we can reach out officially through staff to advise people who may be contacting you to let them know that is against state statute.

Mike Moesner asked if we get letters in the mail just don't open them.

Attorney Doll stated he doesn't know how you are going to know what is in the envelope unless you open it but once you recognize that it has something to do with this he would rather you not open it and turn it into staff. He stated we have to collect all of these and we have to keep it as part of the record as we did in Prime Foods', and which ultimately became a banker's box full of documents. He said he has no doubt that this hearing will last hours.

Bob Johnson stated that is a political answer.

Mike Moesner asked if we needed to order pizza.

Attorney Doll stated what we will do is take breaks and we can even recess to take a lunch break and come back like courts do. He said but if we start at 9:00 a.m., he feels more comfortable that we will be done by sometime in the afternoon.

Bob Johnson said like midnight that night.

Attorney Doll replied no promises express or implied.

Terry Dayvolt asked if this would be considered the Monday night meeting also or are we going to be paid double.

Mike Winge & Attorney Doll replied no.

Attorney Doll said he thinks by law you are entitled to be paid for the special meeting so you are going to make your \$50.

Doris Horn made a motion to adjourn the meeting.

The motion was seconded by Mike Moesner and unanimously carried.

The meeting adjourned at 7:06 p.m.

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Jeff Valiant

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held June 25, 2018.

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Molly Barnhill, Assistant Director